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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,720	01/17/2002	Michael Robert Dehart	DEH01-02	4224

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EXAMINER

RODRIGUEZ, JOSEPH C

ART UNIT

PAPER NUMBER

3653

DATE MAILED: 09/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

10/053,720

Applicant(s)

DEHART ET AL.

Examiner

Joseph C Rodriguez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 16-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 14 and 15 is/are rejected.
- 7) ☒ Claim(s) 12 and 13 is/are objected to.
- 8) ☒ Claim(s) 16-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Final Rejection

Applicant's arguments filed 7/14/03 have been fully considered but they are not persuasive for reasons detailed below.

The prior art rejections are maintained or modified as follows:

Claims 1, 3-11 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Downerd (US '805).

Regarding claims 1 and 3, Downerd teaches an apparatus (Fig. 1) comprising a hopper (11) with water means (27) and a pump (26), a separator with a rotatable screen (10, 14, 19), a first outlet (30) and a second outlet (20).

Regarding claims 4-7, Downerd also teaches drive means (near 40), wherein the rotating screen is regarded as centrifugally directing material towards the first outlet and the screen apertures are regarded as a means for screening out material.

Regarding claims 8-11, Downerd also teaches a sand tank (21), a first water holding tank (25) with an outlet (near bottom), a separator outlet line (20, 24), a second water holding tank (16) and a first water holding tank outlet line (27) that indirectly connect the two holding tanks.

Regarding claim 14, Downerd also teaches a water pump (17) for pumping water to the separator.

Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Singer (US '980).

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Regarding claims 1-3, Singer teaches an apparatus (Fig. 1) comprising a hopper (20) with water means (22, 29) and a pump (31), a separator with a rotatable screen (14), a first outlet (13) and a second outlet (near 27), wherein Singer also teaches a pump (24) that transfers material from the hopper to the separator. Hereinafter, a pump is regarded as any device that moves or transfers fluid.

Regarding claims 4-7, Singer also teaches drive means (near 15, 17, 18), wherein the rotating screen is regarded as centrifugally directing material towards the first outlet and the screen apertures are regarded as a means for screening out material.

Claims 1, 2, 4-7 and 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Carlson (US '733).

Regarding claims 1 and 2, Carlson teaches an apparatus (Fig. 1) comprising a hopper (near 4) with water means (50), a separator with a rotatable screen (near 10), a first outlet (near 50) and a second outlet (near 32), wherein Carlson also teaches a pump (9) that transfers material from the hopper to the separator.

Regarding claims 4-7, Carlson also teaches drive means (near 18, 20), wherein the rotating screen is regarded as centrifugally directing material towards the first outlet and the screen apertures are regarded as a means for screening out material.

Regarding claims 14 and 15, Carlson also teaches also teaches a water pump (26) for pumping water to the separator and a baffle (teeth near 6) with a predetermined aperture size (i.e., tooth spacing).

Allowable Subject Matter

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Election/Restrictions

Newly submitted claims 16-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The inventions of claims 1-15 and 16-20 are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). Here, the method of claims 16-20 can be practiced by an apparatus that is material different from the apparatus claimed in claims 1-15 (i.e., an apparatus without a hopper with a water means).

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 16-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

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Examiner has maintained the prior art rejections, statutory rejections and drawing objections as previously stated and as modified above. Applicant's amendment necessitated any new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Conclusion

Any references not explicitly discussed above but made of record are considered relevant to the prosecution of the instant application.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph C Rodriguez whose telephone number is **703-30°-8342**. The examiner can normally be reached on M-F during normal business hours (9 am – 6 pm, EST).

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The examiner's **Personal fax number** is **703-746-3678**.

The **Official** fax phone number for the organization where this application or proceeding is assigned is **703-306-4195**.

The **UnOfficial** fax phone number for the organization where this application or proceeding is assigned is **703-306-2571 or 703-308-6552**.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

September 9, 2003


DONALD P. WALSH
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600